

Introduced by Senator Sher

February 22, 2001

An act to amend Section 2796.5 of, and to add Section 2797 to, the Public Resources Code, relating to mining.

LEGISLATIVE COUNSEL'S DIGEST

SB 483, as introduced, Sher. Surface mining and reclamation.

The existing Surface Mining and Reclamation Act of 1975 establishes a state abandoned minerals and mineral materials mine reclamation program for the purpose of administering funds received by the state under the federal Surface Mining Control and Reclamation Act of 1977, or through amendments to specified federal general mining laws. Existing law permits funds appropriated by the Legislature to be used for the state abandoned minerals and mineral materials mine reclamation program.

Existing law also, until January 1, 2003, permits the Director of Conservation to remediate or complete reclamation of abandoned mined lands that meet specified requirements and to make the costs of remediation a lien on the affected property.

This bill would extend the time for the director to remediate or complete reclamation of abandoned mined lands to January 1, 2004.

The bill would also require the director, on or before March 1, 2002, to prepare and submit to the Governor and the Legislature a report identifying abandoned mine lands known to meet the remediation or reclamation requirements.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 2796.5 of the Public Resources Code is amended to read:

2796.5. (a) The director, with the consultation of appropriate state and local agencies, may remediate or complete reclamation of abandoned mined lands that meet all of the following requirements:

(1) No operator having both the responsibility and the financial ability to remediate or reclaim the mined lands can be found within the state.

(2) No reclamation plan is in effect for the mined lands.

(3) No financial assurances exist for the mined lands.

(4) The mined lands are abandoned, as that term is used in paragraph (6) of subdivision (h) of Section 2770.

(b) In deciding whether to act pursuant to subdivision (a), the director shall consider whether the action would accomplish one of the following:

(1) The protection of the public health and safety or the environment from the adverse effects of past surface mining operations.

(2) The protection of property that is in danger as a result of past surface mining operations.

(3) The restoration of land and water resources previously degraded by the adverse effects of surface mining operations.

(c) The director may also consider the potential liability to the state in deciding whether to act under this section. Neither the director, the department, nor the state, or its appointees, employees, or agents, in conducting remediation or reclamation under this section, shall be liable under applicable state law, and it is the intent of the Legislature that those persons and entities not be liable for those actions under federal laws.

(d) (1) The remediation or reclamation work performed under this section includes, but is not limited to, supervision of remediation or reclamation activities that, in the director's judgment, is required by the magnitude of the endeavor or the urgency for prompt action needed to protect the public health and safety or the environment. The action may be taken in default of, or in addition to, remedial work by any other person or

1 governmental agency, and regardless of whether injunctive relief
2 is being sought.

3 (2) The director may authorize the work to be performed
4 through department staff, with the cooperation of any other
5 governmental agency, or through contracts, and may use rented
6 tools or equipment, either with or without operators furnished.

7 (3) In cases of emergency where quick action is necessary,
8 notwithstanding any other provision of law, the director may enter
9 into oral contracts for the work, and the contracts, whether written
10 or oral, may include provisions for the rental of tools or equipment
11 and in addition the furnishing of labor and materials necessary to
12 accomplish the work. These emergency contracts are exempt from
13 approval by the Department of General Services pursuant to
14 Section 10295 of the ~~Government Code~~ *Public Contract Code*.

15 (4) The director shall be permitted reasonable access to the
16 abandoned mined lands as necessary to perform any remediation
17 or reclamation work. The access shall be obtained with the consent
18 of the owner or possessor of the property or, if the consent is
19 withheld or otherwise unobtainable, with a warrant duly issued
20 pursuant to the procedure described in Title 13 (commencing with
21 Section 1822.50) of Part 3 of the Code of Civil Procedure.
22 However, in the event of an emergency affecting the public health
23 or safety, the director may enter the property without consent or the
24 issuance of a warrant.

25 (e) For any remediation or reclamation work accomplished, or
26 other necessary remedial action taken by any governmental
27 agency, the operator, landowner, and the person or persons who
28 allowed or caused any pollution or nuisance are liable to that
29 governmental agency to the extent of the reasonable costs actually
30 incurred in remediating, reclaiming, or taking other remedial
31 action. The amount of the costs is recoverable in a civil action by,
32 and paid to, the governmental agency and the director to the extent
33 of the director's contribution to the costs of the remediation,
34 reclamation, cleanup, and abatement or other corrective action.

35 (f) (1) The amount of the costs constitutes a lien on the affected
36 property upon service of a copy of the notice of lien on the owner
37 and upon the recordation of a notice of lien, which identifies the
38 property on which the remediation or reclamation was
39 accomplished, the amount of the lien, and the owner of record of
40 the property, in the office of the county recorder of the county in

1 which the property is located. Upon recordation, the lien has the
2 same force, effect, and priority as a judgment lien, except that it
3 attaches only to the property posted and described in the lien. The
4 lien shall continue for 10 years from the time of the recording of
5 the notice of the lien unless sooner released or otherwise
6 discharged, and may be renewed.

7 (2) Not later than 45 days after receiving a notice of lien, the
8 owner may petition the court for an order releasing the property
9 from the lien or reducing the amount of the lien. In this court
10 action, the governmental agency that incurred the costs shall
11 establish that the costs were reasonable and necessary. The lien
12 may be foreclosed by an action brought by the director, for a
13 money judgment. Money recovered by a judgment in favor of the
14 director shall be used for the purposes of this chapter.

15 (g) If the operation has been idle for more than one year without
16 obtaining an approved interim management plan, an application
17 for the review of an interim management plan filed for the purpose
18 of preventing the director from undertaking remediation or
19 reclamation of abandoned mined lands under this section shall be
20 voidable by the lead agency or the board upon notice and hearing
21 by the lead agency or the board. In the event of conflicting
22 determinations, the decision of the board shall prevail.

23 (h) “Remediate,” for the purposes of this section, means to
24 improve conditions so that threat to or damage to public health and
25 safety or the environment are lessened or ameliorated, including
26 the cleanup and abatement of pollution or nuisance or threatened
27 pollution or nuisance.

28 (i) “Threaten,” for the purposes of this section, means a
29 condition creating a probability of harm, when the probability and
30 potential extent of harm make it reasonably necessary to take
31 action to prevent, reduce, or mitigate damages to persons,
32 property, or the environment.

33 (j) This section shall apply to abandoned mined lands on which
34 the mining operations were conducted after January 1, 1976.

35 (k) The director may act under this section only upon the
36 appropriation of funds by the Legislature for the purposes of
37 carrying out this section.

38 (l) Nothing in this section limits the authority of any state
39 agency under any other law or regulation to enforce or administer
40 any cleanup or abatement activity.

(m) This section shall remain in effect only until January 1, 2003 2004, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2003 2004, deletes or extends that date.

SEC. 2. Section 2797 is added to the Public Resources Code, to read:

2797. On or before March 1, 2002, the director shall prepare and submit to the Governor and the Legislature a report identifying those abandoned mine lands known to meet the requirements of subdivision (a) of Section 2796.5. The report shall identify and prioritize the severity of known hazards, and provide a cost estimate and proposed source of funding for completing remediation or reclamation work necessary to accomplish one of the following:

(a) Protect public health and safety or the environment from the adverse effects of past surface mining operations.

(b) Protect private or public property that is in danger as a result of past surface mining operations.

(c) Restore land and water resources previously degraded by the adverse effects of surface mining operations.

